STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Plaintiff-Appellant,

v

JEFFREY HALLER, d/b/a H & H POURED WALLS,

Defendant,

and

BRADLEY V. DINNAN,

Defendant-Appellee.

UNPUBLISHED
April 26, 2005

No. 250272
Genesee Circuit Court
LC No. 02-074963-CK

Before: Donofrio, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Plaintiff Farm Bureau General Insurance Company of Michigan ("Farm Bureau") appeals as of right the trial court order denying its motion for summary disposition and granting summary disposition in favor of defendant Bradley Dinnan.[1] This action for declaratory relief involves Jeffrey Haller's operation of a motor vehicle, insured by Farm Bureau, in which he struck Dinnan and Chris Jesme, who were afoot at the time they were hit by Haller's vehicle, during an altercation between the three men outside of a party store. Haller was convicted of assault and battery arising out of the incident. Dinnan proceeded to file suit against Haller and his company in a separate action, alleging injuries flowing from the assault. Farm Bureau, refusing to defend and indemnify Haller, initiated this action, arguing that the insurance policy's exclusion for criminal acts was implicated and supported the denial of coverage. The trial court

[1] Defendant Jeffrey Haller, d/b/a H & H Poured Walls, did not file an answer to the complaint, nor otherwise appear in this action, and accordingly, a default was entered. Haller is not involved as a party to this appeal.

ruled, as a matter of law, that the no-fault act, MCL 500.3101 *et seq*., barred application of the policy's exclusion for criminal acts and mandated coverage up to the policy limit of $300,000. On appeal, Farm Bureau argues error with respect to the trial court's ruling and analysis, asserting that Haller's assault with the vehicle did not constitute the normal use and operation of a motor vehicle, that the "criminal acts" exclusion is consistent with the language of the no-fault act, and that, assuming the unenforceability of the policy exclusion, liability should be limited to the statutory minimums set forth in MCL 500.3009(1). We affirm, holding that the insurance policy's exclusion for criminal acts contravenes the clear and plain language and intent of the no-fault act, that the exclusion is thus unenforceable and invalid, and that coverage in the amount of the $300,000 policy limit is applicable.

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Peden v Detroit*, 470 Mich 195, 200-201; 680 NW2d 857 (2004). Similarly, questions of statutory interpretation are reviewed de novo. *Id.* at 200. Further, the proper interpretation of an insurance contract is a question of law that is reviewed de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

"The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." MCL 500.3101(1). "[A] policy of insurance represented or sold as providing security shall be deemed to provide insurance for the payment of the benefits." MCL 500.3101(3).[2] With respect to residual liability insurance and coverage, MCL 500.3131(1) provides:

> Residual liability insurance shall cover bodily injury and property damage which occurs within the United States, its territories and possessions, or in Canada. This insurance shall afford coverage equivalent to that required as evidence of automobile liability insurance under the financial responsibility laws of the place in which the injury or damage occurs. *In this state this insurance shall afford coverage for automobile liability retained by [MCL 500.3135]*. [Emphasis added.]

We glean from MCL 500.3101(1) and MCL 500.3131(1) that Haller, as owner and registrant of the pickup truck utilized in the assault, was required to maintain residual liability insurance and that the insurance obtained from Farm Bureau for such purpose was required to afford coverage for any liability remaining under MCL 500.3135. MCL 500.3135(3) provides, in relevant part:

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[2] MCL 257.520(b)(2), which is part of the Financial Responsibility Act, MCL 257.501 *et seq.*, also provides that an owner's policy of liability insurance regarding a motor vehicle "[s]hall insure the person named therein . . . against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle . . . ."

> Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by [MCL 500.3101] was in effect is abolished except as to:
>
> (a) Intentionally caused harm to persons or property. . . .[3]

Thus, it is clear that MCL 500.3135 retains automobile tort liability for intentionally caused harm to a person. Accordingly, MCL 500.3131(1) of the no-fault act, by its plain language directly requiring residual liability insurance coverage for automobile liability retained by MCL 500.3135, required Farm Bureau to provide coverage for the intentionally caused harm suffered by Dinnan through Haller's use of the pickup truck. Haller's commission of an assault and battery, with the accompanying intention to cause harm, constituted a "criminal act," yet the policy could not preclude coverage under the "criminal acts" exclusionary provision because liability coverage for intentionally caused harm is mandated by the no-fault act. Allowing application of the "criminal acts" exclusion in this case would be inconsistent with and contrary to the dictates of the no-fault act.

In *Michigan Chiropractic Council v Comm'r of Office of Financial & Ins Services*, 262 Mich App 228, 239; 685 NW2d 428 (2004), this Court, citing *Cruz v State Farm Mut Automobile Ins Co*, 466 Mich 588, 598; 648 NW2d 591 (2002), stated:

> An insurer's provision that facilitates the goals of the [no-fault] act and is harmonious with the Legislature's no-fault insurance regime is valid. Conversely, a provision that is not in harmony with the no-fault scheme established by the Legislature must be rejected.

Accordingly, the exclusionary provision for criminal acts at issue here, being in contravention of the no-fault act, is invalid and must be rejected.

In arguing that, despite the language of MCL 500.3131(1) and MCL 500.3135(3), residual liability coverage is not required for "non-accidental" conduct such as Haller's assault on Dinnan with a motor vehicle, Farm Bureau relies on the language of MCL 500.3131(2), which provides that "[t]his section shall not require coverage in this state other than that required by [MCL 500.3009(1)]." MCL 500.3009(1), which is not a section directly included in the no-fault act but incorporated into the act by reference pursuant to MCL 500.3131(2), provides:

> An automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall not be delivered or issued for delivery in this state with

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[3] The remaining language in MCL 500.3135(3)(a) that excludes certain acts from the scope of intentional conduct is not relevant to this case.

> respect to any motor vehicle registered or principally garaged in this state unless the liability coverage is subject to a limit, exclusive of interest and costs, of not less than $20,000.00 because of bodily injury to or death of 1 person in any 1 *accident*, and subject to that limit for 1 person, to a limit of not less than $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 *accident*, and to a limit of not less than $10,000.00 because of injury to or destruction of property of others in any *accident.* [Emphasis added.][4]

Citing the use of the term "accident," Farm Bureau asserts that the no-fault act does not require residual liability coverage for the intentional use of an automobile to harm another person because such conduct does not constitute an "accident."

Farm Bureau fails to recognize that, unlike § 3131(1) and § 3135(3), § 3009(1) is clearly not directed at defining the *factual circumstances* under which residual liability insurance must be provided by a no-fault insurance policy, but rather is directed at setting forth the *minimum amounts* of such liability coverage that must be provided. Critically, as set forth above, § 3131(1), through incorporation of § 3135, plainly and expressly requires no-fault residual liability coverage for intentionally caused harm to a person. In contrast, no language in § 3009(1) is expressly directed at the circumstances in which liability coverage must be provided, and it merely uses the term "accident" as part of defining the minimum amount of coverage that a policy must provide. To construe §§ 3131(2) and 3009(1) as argued by Farm Bureau would render nugatory § 3131(1). And we adhere to the principle that courts must give effect to every word, phrase, and clause contained in a statute, and must avoid an interpretation that would render any part of a statute surplusage or nugatory. *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001).

Admittedly, § 3009(1), standing alone, could be viewed as implying that such liability coverage is only required for an "accident" as that term is most commonly understood, i.e., an unintended occurrence, and, accordingly, not for intentionally assaulting a person with a motor vehicle. However, "[a]lthough a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context." *G C Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421; 662 NW2d 710 (2003). The mere implication in § 3009(1) as suggested by Farm Bureau cannot overcome the plain language of §§ 3131(1) and 3135(3), which expressly require residual liability coverage under a no-fault insurance policy to extend to intentionally caused harm to a person, given the well-established principle that clear and unambiguous statutory language must be applied and enforced as written. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002).

The term "accident," as used in § 3009(1), should be understood in the context of the overall no-fault act as encompassing any collision or similar incident, whether caused

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[4] The Financial Responsibility Act also includes a section providing for these statutory minimums. MCL 257.520(b)(2).

intentionally or unintentionally, involving a motor vehicle for which liability insurance coverage is required by § 3131(1). It follows that, in providing that § 3131(2) does not require coverage other than that required by § 3009(1), the Legislature simply intended that an insurer not be required to provide a greater amount of coverage, i.e., greater monetary coverage, than that mandated by § 3009(1). Therefore, §§ 3131(2) and 3009(1) do not alter our conclusion that Farm Bureau is required by the no-fault act to provide residual liability coverage with regard to the incident at issue. Moreover, our interpretation of these statutory provisions complies with the principles of statutory construction that statutes which relate to the same subject or share a common purpose are in pari material and must be read together as one law, *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998), and that parts of an act must be construed harmoniously to effectuate the Legislature's intent, *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001).

Farm Bureau's reliance on *Nabozny v Burkhardt*, 461 Mich 471; 606 NW2d 639 (2000), is misplaced. *Nabozny* is distinguishable because in that case the term "accident" was used in isolation as an undefined term in an insurance policy. *Id.* at 473-474. Consistent with the most commonly understood meaning of the term, the Court concluded that it did not extend to a circumstance in which a person intentionally created a direct risk of injuring another person by physically attacking him. *Id.* at 477-481. In contrast, as used in § 3009(1), the term "accident" cannot reasonably be understood in isolation, but rather must be considered in the context of other provisions of the no-fault act that expressly mandate residual liability coverage for circumstances in which a person uses a motor vehicle to intentionally cause harm to another person. We conclude that the definition of "accident" in *Nabozny* is inapplicable to the present case.

Farm Bureau next contends that residual liability coverage under the no-fault act is available only for injuries resulting from the "normal" use or operation of a motor vehicle as a motor vehicle. But, as indicated above, this position is not supported by the relevant statutory provisions. Nothing in the language of §§ 3131 and 3135 limits liability to the "normal" use of a motor vehicle. Accordingly, to impose such a "normal" use limitation on no-fault residual liability coverage would be contrary to the principle that "a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts, supra* at 63. The numerous cases cited by Farm Bureau in support of its argument are inapposite because those cases addressed claims for first-party, no-fault personal injury protection (PIP) benefits pursuant to MCL 500.3105 of the no-fault act, and involved scenarios where a vehicle was merely the situs of a criminal act and not, as in the case at bar, used as the instrumentality to inflict injuries.[5] Potential tort liability arose from Haller's

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[5] An insurer is liable to pay PIP benefits "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle[.]" MCL 500.3105(1). Further, "[b]odily injury is accidental as to a person claiming personal protection insurance benefits unless suffered intentionally by the injured person or caused intentionally by the claimant." MCL 500.3105(4). This statute is simply not applicable here as it does not relate to residual tort liability.

"use" of his pickup truck. MCL 500.3135(3)(tort liability arising from the ownership, maintenance, or use of a motor vehicle).

In sum, we hold that the trial court did not err by concluding that Farm Bureau was required by the no-fault act to provide residual liability coverage. The trial court properly ruled that the "criminal acts" exclusion in the insurance policy was unenforceable.

With respect to the extent of coverage and the question whether the $300,000 policy limit or the statutory minimum should apply in light of the invalid exclusionary provision, this Court in *Farmers Ins Exch v Kurzmann*, 257 Mich App 412; 668 NW2d 199 (2003), distinguishing *State Farm Mut Automobile Ins Co v Shelly*, 394 Mich 448; 231 NW2d 641 (1975), and *Citizens Ins Co of America v Federated Mut Ins Co*, 448 Mich 225; 531 NW2d 138 (1995), held that the policy limits, and not the statutory minimums, applied in the face of an invalid exclusionary clause. We agree with the conclusion reached in *Kurzmann.* Moreover, and aside from *Kurzmann* and the case law discussed therein, a contractual provision of the insurance policy dictates that the $300,000 policy limit controls. The relevant provision provides:

COMMON POLICY CONDITIONS

* * *

M. CONFORMITY WITH STATUTE

> Terms of this policy which are in conflict with the statutes of the state where the property described in the Declarations is located are amended to conform to such statutes.[6]

Under contract law principles, this self-amending language indicates that the inclusion of an invalid provision, i.e., the "criminal acts" exclusion in this instance, results in the deletion or voiding of the offending language, while leaving intact the remainder of the contractual terms and obligations, including the provisions addressing the extent of the coverage. The insurance policy's liability coverage requires Farm Bureau to pay "all sums an 'insured' legally must pay as damages because of 'bodily injury' . . . to which [the] insurance applies, caused by an 'accident' and resulting from the ownership, maintenance, or use of a covered 'auto.'" With regard to the policy's limit regarding liability coverage, the insurance contract provides that $300,000 is the most that Farm Bureau "will pay for any one accident or loss." The policy limit of $300,000 remains intact despite the inapplicability of the exclusion for criminal acts.

Furthermore, the exclusion at issue here is patently and clearly violative of the no-fault act, and any insurer would be knowledgeable of this fact, especially in light of the plain language of the statutory provisions cited above. The "criminal acts" exclusion found in Farm Bureau's

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[6] Pursuant to this Court's request at oral argument, the entire insurance policy, which includes the quoted language, was submitted for consideration without dispute.

policy can encompass more than simply criminal acts in which the operator of a vehicle intentionally causes harm. Crimes such as, but not limited to, negligent vehicular homicide, MCL 750.324, involuntary manslaughter, MCL 750.321, and alcohol-related driving offenses causing serious injury or death, MCL 257.625(4) and (5), are indeed criminal acts, but do not involve intentionally caused harm. Nonetheless, there still remains tort liability and mandated coverage under §§ 3131(1) and 3135 of the no-fault act. Any argument by an insurer to the contrary is baseless. The $300,000 in coverage provided by the insurance policy is applicable in this action.

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Stephen L. Borrello